

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 SUMMARY ORDER

4 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
5 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER
6 COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER
7 COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN
8 ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.
9

10 At a stated term of the United States Court of Appeals for the
11 Second Circuit, held at the Thurgood Marshall United States
12 Courthouse, Foley Square, in the City of New York, on the 30th day
13 of April, two thousand and Four.

14 PRESENT:

15 HON. ROBERT D. SACK,
16 HON. SONIA SOTOMAYOR,

17 Circuit Judges,

18 HON. LEWIS A. KAPLAN,

19 District Judge.*

20 -----
21 JOHN DOE and JANE DOE,

22 Plaintiffs-Appellants,

23 - v -

No. 02-7674

24 AMERICAN MEDICAL SYSTEMS, INC.,

25 Defendant-Appellee.
26 -----

27 Appearing For Appellant: SEBASTIAN DESANTIS, DeSantis,
28 Sabilia & Waggoner, New London, CT.

* Of the United States District Court for the Southern
District of New York, sitting by designation.

1 Appearing For Appellee: HOLLY M. POLGLASE, Campbell,
2 Campbell, Edwards & Conroy (Timothy
3 M. Roche, of counsel), Boston, MA.

4 Appeal from the United States District Court for the
5 District of Connecticut (Ellen Bree Burns, Judge).

6 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND
7 DECREED that the judgment of the district court be, and it hereby
8 is, AFFIRMED.

9 Plaintiffs-appellants Jane and John Doe appeal from the
10 district court's grant of summary judgment to defendant-appellee
11 American Medical Systems, Inc. ("AMS"), arguing that the district
12 court erred by excluding the testimony of the plaintiffs'
13 proposed expert witness, Dr. Barry Feinberg, and that, with such
14 testimony, AMS's motion for summary judgment would have been
15 denied. Dr. Feinberg's deposition testimony indicates that he
16 would have testified that the AMS penile prosthesis implanted in
17 John Doe was defectively manufactured. The district court
18 determined, however, that Dr. Feinberg was not qualified to
19 testify as an expert in this matter and that his methods were
20 inherently unreliable.

21 The district court did not abuse its discretion in
22 determining that Dr. Feinberg lacked the "knowledge, skill,
23 experience, training, or education" needed to testify that the
24 prosthesis implanted in John Doe was defective. Fed. R. Evid.
25 702. Although Dr. Feinberg has substantial engineering
26 credentials, he is not an expert in penile implants or similar
27 devices. His involvement with penile implants almost exclusively
28 consists of his work as an expert witness. His formal medical
29 training is limited to seminars addressing medical topics and
30 three courses taken while pursuing his engineering doctorate.

31 Nor did the district court abuse its discretion in
32 determining that Dr. Feinberg's methods were not "the product of
33 reliable principles and methods." Id. Had he been allowed to
34 testify, Dr. Feinberg would have stated that (1) the implant
35 failed prematurely; (2) the failure was not caused by damage from
36 a sharp surgical instrument; and (3) the prosthesis was
37 defectively manufactured in that the tubing used in the device
38 could not withstand "normal" forces. Dr. Feinberg reached these
39 conclusions through examination and extrapolation unsupported by
40 expert qualifications and by ignoring alternative explanations.
41 For example, Dr. Feinberg presents little explanation for
42 excluding undue stress on the prosthesis, perhaps caused by John
43 Doe, as a potential cause of its failure. His conclusions are

1 "connected to existing data only by . . . [his own] ipse dixit"
2 and are thus unreliable. General Elec. Co. v. Joiner, 522 U.S.
3 136, 146 (1997).

4 For the foregoing reasons, the judgment of the district
5 court is hereby AFFIRMED.

6 FOR THE COURT:
7 ROSEANN B. MACKECHNIE, Clerk

8 _____ 4/30/04
9 By: Oliva M. George Date
10 Deputy Clerk